Appendix

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS AND MARY LEE WILLIAMS, PETITIONERS

v.

UNITED STATES, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 5, 1970
CERTIORARI GRANTED OCTOBER 12, 1970

INDEX

412-584—70——1

PERTINENT DOCKET ENTRIES

1966

Apr. 6 Indictment returned at Jax., Fla.

May 6 James Wintfored Rewis Arraigned and Plead Not Guilty to all Counts 1 through 18.

May 6 Mary Lee Williams Arraigned and Plead Not Guilty to Counts 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18.

May 6 Ethel Scott Owens Arraigned and Plead Not Guilty to Counts 1, 4 & 5.

May 6 Oliver Louis Nightengale, Sr. Arraigned and Plead Not Guilty to Counts 1, 10, 11, 14 & 16.

May 6 Robert Lee Fuller, Sr. Arraigned and Plead Not Guilty to Counts 1, 10, 11 & 12.

May 6 Lemon Dawson Arraigned and Plead Not Guilty to Counts 1, 7 & 17.

May 6 Alex Powell Arraigned and Plead Not Guilty to Counts 1, 8, 9, 10 & 15.

May 6 Max Hugh Sullivan Arraigned and Plead Not Guilty to Counts 1, 12, 13 & 14.

May 6 Ola Mae Smith Arraigned and Plead Not Guilty to Counts 1, 12, 14, 15, 16 & 17.

May 6 Trennial Owens Arraigned and Plead Not Guilty to Counts 1, 6, 14 & 15.

1967

Sept. 11 Proceedings on Trial and Jury Empanelled.

Sept. 21 Motion for Judgment of Acquittal as to each defendant.

Sept. 21 Motion to Strike from Count 1, Overt Acts as to each defendant.

Sept. 21 Motion for Judgment of Acquittal as to Defts. Ethel Scott Owens, Lemon Dawson, Max Hugh Sullivan, & Ola Mae Smith—Granted and Denied as to all other defendants.

Sept. 21 Motion to Strike as to Defts. Ethel Scott Owens, Lemon Dawson, Max Hugh Sullivan & Ola Mae Smith—Granted and denied as to all other defendants.

Sept. 21 Motion for Judgment of Acquittal as to Deft. Rewis as to Counts 4, 5, 7, 13 & 18—Granted.

Sept. 21 Motion for Judgment of Acquittal as to Deft. Williams as to Count 7, 13 & 18—Granted.

Sept. 21 Motion for Judgment of Acquittal as to each of Counts remaining in the Indictment as to defts. Rewis, Williams, Powell, Trenniai Owens, Nightengale & Fuller—Denied.

Sept. 21 Motion to Strike Overt Acts from Count 1 as to defts. Rewis, Williams, Powell, Trennial Owens, Nightengale & Fuller—Renewed—Denied.

Sept. 21 Judgment of Dismissal as to Deft. James Wintfored Rewis as to Cts. 4, 5, 7, 13 & 18.

Sept. 21 Judgment of Dismissal as to Deft. Mary Lee Williams as to Cts. 7, 13 & 18.

Sept. 21 Judgment of Dismissal as to Deft. Ethel Scott Owens as to Cts. 1, 4 & 5.

Sept. 21 Judgment of Dismissal as to Deft. Lemon Dawson as to Cts. 1, 7 & 17.

Sept. 21 Judgment of Dismissal as to Deft. Max Hugh Sullivan as to Cts. 1, 12, 13, 14.

Sept. 21 Judgment of Dismissal as to Deft. Ola Mae Smith as to Cts. 1, 12, 14, 15, 16 & 17.

Sept. 25 Arguments of Counsel.

Sept. 26 Jury Charges.

Sept. 26 VERDICT as to Deft. Rewis: GUILTY as to Counts 1, 2, 3, 8, 9, 10, 11, 12, 14, 16 & 17, and NOT GUILTY as to Counts 6 & 15.

Sept. 26 VERDICT as to Deft. Williams: GUILTY as to Counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 and NOT GUILTY as to Counts 6 & 15.

Sept. 26 VERDICT as to Deft. Powell: NOT GUILTY as to Counts 1, 8, 9, 10 & 15.

Sept. 26 VERDICT as to Deft. Trennial Owens: NOT GUILTY AS TO Counts 1, 6, 14 & 15.

Sept. 26 VERDICT as to Deft. Nightengale: GUILTY as to Counts 10, 11, 14 & 16 and NOT GUILTY as to Count 1.

Sept. 26 VERDICT as to Deft. Fuller: GUILTY as to Counts 10, 11 & 12 and NOT GUILTY as to Count 1.

Sept. 26 Judgment of Dismissal as to Deft. Alex Powell as to Counts 1, 8, 9, 10 & 15.

Sept. 26 Judgment of Dismissal as to Deft. Trennial Owens as to Counts 1, 6, 14 & 15.

Sept. 26 Government's Requested Instructions.

Sept. 26 Defendant Rewis' Requested Instructions.

Sept. 26 Defendant Williams' Requested Instructions.

Sept. 26 Judgment of Dismissal as to Deft. Rewis as to Counts 6 & 15.

Sept. 26 Judgment of Dismissal as to Deft. Williams as to Counts 6 & 15.

Oct. 3 Motion for Judgment of Acquittal Notwithstanding the Verdict or for a new trial by deft. Mary Williams.

Oct. 20 Motion by Deft. James Rewis for Judgment of Acquittal or, in the alternative for New Trial.

Nov. 7 Order denying motion for judgment of acquittal notwithstanding the verdict or for a new trial, denying the motion for judgment of acquittal or in the alternative for a new trial as to defts. Mary Williams and James Rewis, respectively, further denying the motion for judgment of acquittal or in the alternative for a new trial as to defts. Oliver Nightengale and Robert Fuller, Sr., ordering a pre-sentence investigation as to each deft., continuing bonds in force and directing the defts to appear for imposition of sentence at 11:00 a.m. Friday, Dec. 15, 1967, in Courtroom 2.

Dec. 15 SENTENCE as to Deft. James Wintfored Rewis: 5 yrs. impr. as to each of Counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 to run concurrently with each other. 1 yr. as to Counts 2 & 3 to run concurrently with each other and concurrently with sentence imposed in Cts. 1, 8, 9, 10, 11, 12, 14, 16 & 17.

Dec. 15 SENTENCE as to Deft. Williams: 3 years as to each of counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 to run concurrently with each other. Deft. shall become eligible for parole pursuant to Title 18, Sec. 4208(a)(2)

Dec. 20 Notice of Appeal as to Deft. James W. Rewis.

Dec. 22 Notice of Appeal as to Deft. Mary Lee Williams.

1968

Mar. 4 Transcript of proceedings at Trial filed (5 volumes). (Enclosed as numbered by the Official Reporter.)

1970

Feb. 16 Opinion of Court of Appeals.

Feb. 16 Mandate of Court of Appeals reversing and remanding as to the defendants Robert Lee Fuller, Sr., and Oliver Louis Nightengale, Sr., for an entry of Judgment of Acquittal in accordance with the Opinion.

United States District Court, Middle District of Florida, Jacksonville Division

No. 66–65–Cr–J (18 USC 371, 18 USC 1952, and Section 2, 26 USC 7203)

UNITED STATES OF AMERICA

v.

JAMES WINTFORED REWIS; AGNES MYREL REWIS; MARY LEE WILLIAMS; OLIVER LOUIS NIGHTENGALE, SR.; ROBERT LEE FULLER, SR.; ALEX POWELL; TRENNIAL OWENS

MODIFIED INDICTMENT

The Grand Jury charges:

COUNT ONE

From on or about May 8, 1965, and continuously at all times thereafter to and including August 14, 1965, in Nassau County, in the Middle District of Florida, and in Camden County, in the Southern District of Georgia, and in other places to the Grand Jury unknown, the defendants, JAMES WINTFORED REWIS, AGNES MYREL REWIS, MARY LEE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., ALEX POWELL and TRENNIAL OWENS, did unlawfully, willfully and knowingly conspire, combine, confederate and agree together and with Dorothy Mae Evans, Charlotte Williams and Josephine Wright and with divers other persons whose names are to the Grand Jury unknown, to commit certain offenses against the United States of America, namely:

1. To travel in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery, and thereafter to perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

And the Grand Jury further charges that in pursuance of said conspiracy, combination, confederation and agreement and to effect and accomplish the objects thereof, the defendants did do and commit the following overt acts:

1. On May 8, 1965, TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

2. On May 15, 1965, JAMES WINTFORED REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

4. On May 22, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

5. On May 22, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

6. On May 29, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the

residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

7. On May 29, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

8. On June 5, 1965, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR. and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

9. On June 12, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

10. On June 12, 1965, ROBERT LEE FULLER, SR. and OLIVER LOUIS NIGHTENGALE, SR. travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

11. On June 19, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

12. On June 19, 1965, ROBERT LEE FULLER, SR. travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

13. On July 3, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

15. On July 10, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the

residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

16. On July 10, 1965, OLIVER LOUIS NIGHTENGALE, SR. and TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

17. On July 17, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

18. On July 17, 1965, JOSEPHINE WRIGHT, ALEX POWELL and TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

19. On July 24, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

20. On July 24, 1965, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS and OLIVER LOUIS NIGHTENGALE, SR., travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

21. On July 31, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

22. On July 31, 1965, CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

23. On August 7, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

24. On August 7, 1965, JOSEPHINE WRIGHT travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

25. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

26. On August 14, 1965, JOSEPHINE WRIGHT AND CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

27. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS possessed numbers, tickets, cash and other wagering paraphernalia.

29. On August 14, 1965, DOROTHY MAE EVANS checked up Cuba lottery sales at the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida; all in violation of Title 18, United States Code, Section 371.

COUNT TWO

During the period May 15, 1965, through June 30, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in sections 4421(1)(c) and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the

Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

COUNT THREE

During the period July 1, 1965, through August 14, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c) and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

COUNT SIX

On or about May 8, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully

and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT EIGHT

On or about May 22, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT NINE

On or about May 29, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management,

establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT TEN

On or about June 5, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT ELEVEN

On or about June 12, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS,

ROBERT LEE FULLER, SR., OLIVER LOUIS NIGHTENGALE, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT TWELVE

On or about June 19, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT FOURTEEN

On or about July 10, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, OLIVER LOUIS NIGHTENGALE, SR., TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT FIFTEEN

On or about July 17, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity;

in violation of Title 18, United States Code, Section 1952.

COUNT SIXTEEN

On or about July 24, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT SEVENTEEN

On or about July 31, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did un-

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lawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

A true bill.

DAVE W. HARDEN,
Foreman.

EDWARD F. BOARDMAN,
United States Attorney.
By BERNARD NACHMAN,
Assistant United States Attorney.

United States District Court, Middle District of Florida, Jacksonville Division

No. 66–65–Cr–J (18 USC 371, 18 USC 1952, 18 USC 1953, and Section 2, 26 USC 7203)

UNITED STATES OF AMERICA

v.

JAMES WINTFORED REWIS, AGNES MYREL REWIS, MARY LEE WILLIAMS, ETHEL SCOTT OWENS, OLIVER LOUIS NIGHTENDALE, SR., ROBERT LEE FULLER, SR., LEMON DAWSON, ALEX POWELL, MAX HUGH SULLIVAN, OLA MAE SMITH, TRENNIAL OWENS

INDICTMENT FILED APRIL 6, 1966

The Grand Jury charges:

COUNT ONE

From on or about May 8, 1965, and continuously at all times thereafter to and including August 14, 1965, in Nassau County, in the Middle District of Florida, and in Camden County, in the Southern Dis-

trict of Georgia, and in other places to the Grand Jury unknown, the defendants, JAMES WINTFORED REWIS, AGNES MYREL REWIS, MARY LEE WILLIAMS, ETHEL SCOTT OWENS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., LEMON DAWSON, ALEX POWELL, MAX HUGH SULLIVAN, OLA MAE SMITH and TRENNIAL OWENS, did unlawfully, willfully and knowingly conspire, combine, confederate and agree together and with Dorothy Mae Evans, Charlotte Williams and Josephine Wright and with divers other persons whose names are to the Grand Jury unknown, to commit certain offenses against the United States of America, namely:

1. To travel in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery, and thereafter to perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

2. To knowingly carry and send in interstate commerce records, paraphernalia, slips, papers, writings and other devices used and to be used and adapted for use in a numbers game; in violation of Title 18, United States Code, Section 1953.

And the Grand Jury further charges that in pursuance of said conspiracy, combination, confederation and agreement and to effect and accomplish the objects thereof, the defendants did do and commit the following overt acts:

1. On May 8, 1965, TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

2. On May 15, 1965, JAMES WINTFORED REWIS visited the residence of Mary Lee Williams on U.S. HighwayA1A, Yulee, Florida.

3. On May 15, 1965, LEMON DAWSON travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

4. On May 22, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

5. On May 22, 1965, CHARLOTTE WILLIAMS, LEMON DAWSON and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

6. On May 29, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

7. On May 29, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

8. On June 5, 1965, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

9. On June 12, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

10. On June 12, 1965, ROBERT LEE FULLER, SR., and OLIVER LOUIS NIGHTENGALE, SR., travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

11. On June 19, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

12. On June 19, 1965, ROBERT LEE FULLER, SR., MAX HUGH SULLIVAN and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway, A1A, Yulee, Florida.

13. On July 3, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

14. On July 3, 1965, MAX HUGH SULLIVAN travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

15. On July 10, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

16. On July 10, 1965, OLIVER LOUIS NIGHTENGALE, SR., MAX HUGH SULLIVAN, TRENNIAL OWENS and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

17. On July 17, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

18. On July 17, 1965, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

19. On July 24, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

20. On July 24, 1965, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

21. On July 31, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

22. On July 31, 1965, CHARLOTTE WILLIAMS, LEMON DAWSON and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

23. On August 7, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

24. On August 7, 1965, JOSEPHINE WRIGHT travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

25. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

26. On August 14, 1965, JOSEPHINE WRIGHT and CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

27. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS possessed numbers, tickets, cash and other wagering paraphernalia.

28. On August 14, 1965, ETHEL SCOTT OWENS transported Cuba numbers tickets from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

29. On August 14, 1965, DOROTHY MAE EVANS checked up Cuba lottery sales at the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida; all in violation of Title 18, United States Code, Section 371.

COUNT TWO

During the period May 15, 1965, though June 30, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c), and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

COUNT THREE

During the period July 1, 1965, through August 14, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c), and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

COUNT FOUR

On or about August 14, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS and ETHEL SCOTT OWENS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

Count Five

On or about August 14, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS and ETHEL SCOTT OWENS unlawfully and willfully carried and sent and caused the carrying and sending in interstate commerce from Camden County, Georgia, to Nassau County, Florida, in the Middle District of Florida, records, paraphernalia, slips, papers, writings and other devices used and to be used and adapted for use in a numbers game; in violation of Title 18, United States Code, Section 1953.

Count Six

On or about May 8, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT SEVEN

On or about May 15, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, LEMON DAWSON and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT EIGHT

On or about May 22, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL, and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date,

they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT NINE

On or about May 29, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfuly and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT TEN

On or about June 5, 1965, at Nassau County in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County,

Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation, of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT ELEVEN

On or about June 12, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR., OLIVER LOUIS NIGHTENGALE, SR., and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT TWELVE

On or about June 19, 1965, at Nassau County, in the Middle District of Florida, and at Camden County,

in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR., MAX HUGH SULLIVAN, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT THIRTEEN

On or about July 3, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, MAX HUGH SULLIVAN and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT FOURTEEN

On or about July 10, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, OLIVER LOUIS NIGHTENGALE, SR., MAX HUGH SULLIVAN, TRENNIAL OWENS, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT FIFTEEN

On or about July 17, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said

date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT SIXTEEN

On or about July 24, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT SEVENTEEN

On or about July 31, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, LEMON DAWSON, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion,

management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

COUNT EIGHTEEN

On or about August 7, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS and MARY LEE WILLIAMS unlawfully and willfully caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

A true bill.

DAVE W. HARDEN,
Foreman.

EDWARD F. BOARDMAN,
United States Attorney.

By BERNARD NACHMAN,
Assistant United States Attorney.

[Microfilmed on Roll No. 36]

No. 66-65-Cr-J

United States District Court, Middle District of Florida, Jacksonville Division

THE UNITED STATES OF AMERICA

v.

JAMES WINTFORED REWIS; AGNES MYREL REWIS; MARY LEE WILLIAMS; ETHEL SCOTT OWENS; OLIVER LOUIS NIGHTENGALE, Sr.; ROBERT LEE FULLER, Sr.; LEMON DAWSON; ALEX POWELL; MAX HUGH SULLIVAN; OLA MAE SMITH; TRENNIAL OWENS

INDICTMENT

Violation: Wagering Tax (18 USC 371, 18 USC 1952, 18 USC 1953, and Section 2, 26 USC 1203).

A true bill,

DAVE W. HARDEN,
Foreman.

Filed in open court this 6th day of April, A.D. 1966.

WESLEY R. THIES,
Clerk.

Bail, $----------

GOVERNMENT'S REQUESTED INSTRUCTION NO. 16—GIVE

You are instructed that the essential elements of the offense with which the defendants are charged are:

(1) Travel in interstate commerce;

(2) With intent to promote, manage, establish, carry on or facilitate the promotion, management,

establishment, or carrying on, of any unlawful activity.

You are further instructed as used in this section that "unlawful activity" includes any business enterprises involving gambling in violation of the laws of the State in which committed.

(3) And thereafter performs or attempts to perform the promotion, management, establishment or carrying on of the unlawful activity.

(Title 18, United States Code, Section 1952.)

GOVERNMENT'S REQUESTED INSTRUCTION NO. 32—GIVE

You are instructed that the statute just read may be violated by "buyers" or "players".

REWIS REQUEST NO. 12—DENY

You are hereby instructed that one who travels in interstate commerce for the purpose of buying or playing numbers is not thereby promoting, managing, establishing, carrying on or facilitating the promotion, management, or carrying on of a gambling operation. One who merely patronizes a gambling operation as a buyer or player is accordingly not within the statute prohibiting interstate travel with intent to promote, manage, establish or carry on the gambling operation or facilitate in promoting, managing establishing or carry on, the gambling operation.

REWIS REQUESTED INSTRUCTION NO. 13—DENY

As you have been advised in connection with those counts charging that defendants travelled and caused travel in interstate commerce with intent to promote,

manage, establish, carry on or facilitate the promotion, management, establishment, and carrying on of an unlawful intent, one of the elements the government is required to prove beyond a reasonable doubt is that such interstate commerce did occur. This means that you must be convinced by the evidence, beyond and to the exclusion of a reasonable doubt, that there was in fact interstate travel by a party so charged. You must, further, be convinced that the evidence, beyond and to the exclusion of a reasonable doubt, that such interstate travel, if any, was for the purpose of, or was connected with, or had the direct effect of promoting, managing, establishing and carrying on an unlawful activity or of facilitating the same. Interstate travel not for the promotion, management, establishment, and carrying on an unlawful acitvity or for facilitating the same is not illegal and does not prove the charges in question. Therefore, unless you find that such interstate travel, if any, as was disclosed beyond and to the exclusion of a reasonable doubt by the evidence, was for the purpose of, connected with, or had the effect of promoting an unlawful activity, you must acquit the defendants so charged, because only interstate travel of such character is sufficient to support the counts in question, and interstate travel failing to have such character does not prove guilt.

[2559] * * * * *

JURY CHARGE

The COURT: Members of the Jury, you have heard the arguments of counsel for the Government and for the defendants, and it now remains for the Court to give you the law in charge, to which you will apply

the facts as you find and believe them from the evidence in order [2560] that you may reach a verdict as to each of these defendants.

It is upon this evidence and that alone, when taken in connection with the law as now given to you in charge by the Court, that you are to base your verdicts.

You, as jurors, are to fairly and dispassionately consider all the evidence in the case and from it and from the law as charged you by the Court, arrive at your verdicts.

It is your province and yours alone to pass on the disputed issues of fact. And it is the Court's province to give you the law in charge which you are to apply to the facts as you find them.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. And neither are you to be concerned about the wisdom of any Rule of Law, because, regardless of any opinion that you might have as to what the law ought to be, it would be a violation of your sworn duties and responsibilities as jurors to base verdicts upon any [2561] other view of the law than that which the Court will give you in the course of these instructions.

A trial such as this, Members of the Jury Panel, is a serious and earnest effort to determine the truth of controverted issues of fact, and the truth and that alone is what is desired by the Court, regardless of who it helps or hurts.

You are instructed that the Statute, 18 United States Code, 1952, under which this case is brought, provides as follows: subparagraph

"(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to promote,

manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts [2562] to perform the acts specified

And then section (b) of that statute provides:

"(b) As used in this Section 'unlawful activity' means any business enterprise involving gambling, in violation of the laws of the State in which committed."

The Gambling Law of the State of Florida in Florida Statute 849.09, provides as follows: Subparagraph

"(1) It shall be unlawful for any person in this State to:

"(a) Set up, promote, or conduct any lottery for money or for anything of value."

You are instructed that the Statute just read may be violated by "buyers" or "players".

Included within the Statute just read is the word "facilitate". As used in this Statute, the word "facilitate" is used in its ordinary and accepted meaning of "to make easy or less difficult".

[2563] You are instructed that the "travel" described in the Criminal Statute just read (18 United States Code, 1952 Section) does not require that the travel facilitate the illegal activity; it requires merely that the person travelling have the intent to and actually facilitate or attempt to facilitate such activity.

To "travel in interstate commerce" means to travel across State lines "between one State * * * and another State * * *."

You are instructed that the essential elements of the offense with which these defendants are charged are:

(1) Travel in interstate commerce;

(2) With intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.

You are further instructed as used in this Section that "unlawful activity" includes any business enterprises involving gambling in violation of the Laws of the State in which committed.

[2564] (3) And thereafter perform or attempt to perform the promotion, management, establishment, or carrying on of the unlawful activity.

In a case where two or more persons are charged with the commission of a crime, the guilt of the accused may be established without proof that the accused personally did every act constituting the offense charged.

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission is punishable as a principal.

Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.

Every person who thus wilfully participates in the commission of a crime may be found to be guilty of that offense.

Participation is wilful if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something [2565] the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused wilfully associate himself in some way with the criminal venture, and wilfully participates in it as he would in something

he wishes to bring about; that is to say, that he wilfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is wilfully done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony [2566] of an accomplice alone, if believed by the Jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the Jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.

Now, Section 371 of Title 18 of the United States Code provides, in part, that:

"If two or more persons conspire * * * to commit any offense against the United States * * * and one or more of such persons do any act to effect the object of the conspiracy, each shall be"—punished, as the law provides.

"Four essential elements are required to be proved in order to establish the offense of conspiracy charged in the indict-[2567]ment:

"First: That the conspiracy described in the indictment was wilfully formed, and was existing at or about the time alleged;

"Second: That the accused wilfully became a member of the conspiracy;

"Third: That one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time and place alleged; and

"Fourth: That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy, as charged."

If the Jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the [2568] Indictment has been proved, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete; and it is complete as to every person found by the Jury to have been wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of "partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other, and may have assembled together and discussed

common aims [2569] and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show, Members of the Jury Panel, beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all of the means or methods set forth in the Indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation: nor that all of the persons charged to have been [2570] members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the Indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the Indictment; and that two or more persons, including one or more of the accused, were knowingly members of the conspiracy as charged in the Indictment.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of

a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the Jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the [2571] defendant, or other person who is claimed to have been a member, wilfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or to participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises, or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a wilful participant—a conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether or not a defendant, [2572] or any other person, was a member of a conspiracy, the Jury are not to consider what others may have said or done. That is to say, the membership of a defendant, or any other person, in a conspiracy, must be established by the evidence in the case as to his own conduct, what he himself wilfully said or did.

Here, the first Count of the Indictment charges a single conspiracy. And if the proof establishes more than one conspiracy, if you find that to be the case,

that is fatal to the Government's case because these defendants could be convicted only on the conspiracy charged in the Indictment, which is one single conspiracy and not several disjointed conspiracies.

The existence of the conspiracy cannot be established against an alleged conspirator by proof of the acts or declarations of his or her alleged co-conspirators done or made in his or her absence.

The existence of the conspiracy must be shown by independent evidence before the acts and declarations of an alleged co-conspirator [2573] can be used against an accused, and then it must be shown that the acts or declarations occurred during the course of the conspiracy and in pursuance of it.

During the course of the trial, proof of acts, statements and declarations of one or more of the defendants or some non-defendant in association with a defendant, made out of the presence of the other defendants, has been admitted in evidence. You are instructed that the acts, declarations and statements of one or more of the defendants made out of the presence of the other defendants are not binding upon such other defendants unless such other defendants are shown by the evidence beyond a reasonable doubt to have been participants in a conspiracy, and unless the acts, statements and declarations were made in the course of and in furtherance of the alleged conspiracy. The same rule applies to the exhibits that were received in evidence.

A criminal intent to participate in a conspiracy presupposes knowledge of the conspiracy. Without such knowledge, there can be [2574] no liability as a co-conspirator. Thus, the fact that a party commits illegal acts that further the object of the conspiracy does not make him a conspirator unless he had some knowledge of the conspiracy.

Where an overt act is required for a conspiracy prosecution, it must be an act done for the purpose of carrying out the conspiracy, a step toward its execution and a manifestation that the conspiracy is at work.

A conspiracy cannot be established by mere proof of defendant's association with guilty persons.

Mere presence on the occasion of a conspiracy is not sufficient to make a person guilty of being part of a conspiracy. While his presence at various times and places may be considered in determining whether there was a conspiracy and whether he was a party to it, more than mere presence is required to show guilt. The Government must prove beyond a reasonable doubt that a defendant took some positive action by act or word towards joining a conspiracy before he can be [2575] found guilty of doing so. Even if you find that a conspiracy did in fact exist, before you can convict a defendant, you must find some such positive action by him or her to have occurred other than mere presence, because mere presence is not sufficient for guilt.

Where the evidence proves separate and distinct conspiracies but does not prove the conspiracy charged in the Indictment, it is insufficient to support a conviction.

The Internal Revenue Code of the United States provides that a tax of $50.00 per year shall be paid by each person who is engaged in the business of accepting wagers, or who is engaged in receiving wagers for or on behalf of any person in the business of accepting wagers. The Internal Revenue Service issues what is commonly known as a "Wagering Tax Stamp" upon the payment of the Occupational Tax.

Section 7203 of the Internal Revenue Code (26 United States Code, Section 7203) provides, in part, that: [2576] "any person required * * * to pay any * * * tax * * * to make a return * * *, keep any records, or supply any information who wilfully fails to pay such * * * tax, make such return, keep such records, or supply such information * * * shall * * * be guilty * * *" of an offense against the laws of the United States.

In prosecution for wilfully failing to register for and pay gambling tax, circumstantial evidence, aided or supplemented by presumption that defendant knew law, would support finding of such knowledge.

You are instructed that the phrase "engaged in the business of accepting wagers" as used in Counts Two and Three of the Indictment cover only persons having some proprietary interest in a business of accepting wagers or from persons directly engaged in the accepting of wagers or the selling or writing of tickets for wagers. A person [2577] engaged merely as a "pickup man" or "runner" who acts merely as a messenger or delivery man in connection with a gambling enterprise is not engaged in accepting wagers within the meaning of the Statute. Therefore, in order for you to find James W. Rewis guilty of Counts Two and Three of the Indictments, you must find that the Government has produced evidence that proves beyond and to the exclusion of a reasonable doubt that he had some proprietary interest in a gambling enterprise or was actively engaged in the sale or accepting of wagers.

You will note that the Indictment charges that the offense was committed on or about a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case established beyond a reasonable

doubt that the offense was committed on a date reasonably near the date alleged.

It is not necessary for the prosecution to prove knowledge of the accused that a particular act or failure to act is a violation [2578] of law. Unless and until outweighed by evidence in the case to the contrary, the presumption is that every person knows what the law forbids and what the law requires to be done. However, evidence that the accused acted or failed to act because of ignorance of the law is to be considered by the Jury in determining whether or not the accused acted or failed to act with specific intent as charged.

The Rules of Evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this Rule exists as to those whom we call expert witnesses. Witnesses who by education and experience have become expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which they profess to be expert and may also state their reasons for the opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you should decide that the [2579] opinion of an expert witness is not based upon a sufficient education and experience or if you should conclude that the reasons given in support of the opinion are not sound, you may reject the opinion entirely.

Circumstantial evidence need not be inconsistent with every conclusion save that of guilt. It need only establish a case which is sufficient to convince a Jury beyond a reasonable doubt. If after consideration of all the evidence in the case, you have a reasonable doubt as to whether the defendant was present at the time and place the alleged offense was committed, you should acquit him.

During a trial, it often becomes the duty of counsel for the parties to object to questions or to evidence. It is the right of counsel to object to the introduction of or to move to strike out evidence he deems improper. You must not be prejudiced against either of the parties to this case because counsel have made such objections or motions or offers regardless of the [2580] Court's rulings thereon.

I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections.

The fact that Mary Lee Williams' residence or house has been referred to at various times by the lawyers and witnesses in this case is not in and of itself evidence upon which you can base your verdicts in this case. The evidence upon which you will decide this case has come to you from live witnesses on the witness stand and various documentary evidence, and you will now apply the law as the Court is giving you in its charge to the evidence as you find and believe it and find your verdicts accordingly.

Now, each of the Counts in the Indictment charges a separate crime or a separate offense. The evidence sufficient to sustain one of the offenses is not necessarily sufficient to sustain the other and you may [2581] therefore find the defendants guilty or not guilty of one of the offenses charged, and this should not control your verdict with respect to the other substantive offenses charged.

In other words, Mrs. Kohler and Gentlemen of the Jury, each of the Counts stands on its own. You should consider the evidence relating to each Count separately in determining the guilt or innocence of each of the defendants with reference to each Count as applicable to each of them.

You are further instructed that the Government is required to prove the charge or charges made against the defendants and is required to prove every element of the charges. And if the Government fails to prove the charges and every element beyond and to the exclusion of every reasonable doubt as to the defendants as to each Count thereof as to what each defendant is charged with, then it is your duty to find the defendants not guilty.

Now, you are the triers of the facts. [2582] That is, you are the sole judges of the evidence, the weight of the evidence and the credibility of the several witnesses that have testified before you; that is, the believability of the witnesses who have testified before you.

You should consider the bias or prejudice, if any, of the witnesses; the interest or the lack of interest that the witnesses may have in the result of their testimony or in the outcome of the case, so that you may determine what effects, if any, that has had upon the testimony that they have given.

You may, Members of the Jury Panel, consider any corroboration or corroborations that you find in the evidence; likewise, any conflicts or contradictions that you may find between the various witnesses who have testified.

You may and you should consider the reasonableness or the lack of reasonableness of the testimony of the several witnesses, as judged by your common sense, everyday [2583] experience in human affairs.

It is your duty to take into consideration all of the facts and circumstances which are in evidence and which you believe to be true, together with the reasonable, ordinary, logical and usual deductions and inferences therefrom, and from those facts as so ascertained determine what is the truth of the facts in this

case and then apply the law as the Court is now giving it to you and return a verdict which reflects your conclusions upon those matters.

It is your duty, if you can, to reconcile the testimony of all of the witnesses so that all of the witnesses shall have spoken the truth. If, however, after a calm, careful, deliberate and dispassionate consideration and comparison of all of the evidence in the case, you are unable to reconcile the testimony of the several witnesses, then it is your duty under your oaths as jurors to reject the testimony of such witness or witnesses or such part thereof as you believe to be untrue and base your ver-[2584]dicts upon the evidence that you believe to be true.

An Indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

The Court will furnish each of you with a revised copy of the Indictment to aid and assist you in considering the evidence and the applicable law which would apply to each of the remaining Counts of the Indictment.

There are two types of evidence from which a Jury may properly find a defendant guilty of a crime:

One is direct evidence, such as the testimony of an eyewitness.

The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, Members of the Jury Panel, the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant, [2585] the Jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Now, the defendants are not bound to explain anything and their failure to explain anything connected with the case cannot be considered by you as a circumstance that tends to prove the defendants guilty.

The defendants are presumed to be innocent until the Government by competent evidence has shown their guilt to the exclusion of and beyond a reasonable doubt. And the presumption of innocence remains with the defendants as to each and every material allegation of the Counts of the Indictment until it has been met and overcome by the evidence to the exclusion of and beyond a reasonable doubt.

If any one of the material allegations of each Count of the Indictment is not proved to the exclusion of and beyond a reasonable doubt, then you must give the defendant or defendants charged therein the benefit of the doubt and acquit him or her.

[2586] Now, by a reasonable doubt is not meant a speculative or fanciful doubt. If after you have carefully weighed the testimony and the exhibits which are before you in the light of the law which the Court is now giving to you, you have a full, firm, and abiding conviction to a moral certainty that either of the defendants or all are guilty as charged, then the guilt of that particular defendant has been established beyond a reasonable doubt. If you do not have such a full, firm, and abiding conviction, then of course the guilt of that defendant has not been established beyond a reasonable doubt.

The law does not require a person to be proved guilty to a mathematical certainty but only to a moral certainty. A reasonable doubt remains, however, when, after weighing all the evidence, you do not feel to a moral certainty that the charges are true.

And I further charge you, Members of the Jury Panel, that your verdict should be the verdicts of each and everyone of you and [2587] should not be

left to lot or to chance. Moreover, your verdicts must be unanimous. It is not enough that most of you agree to it or that the verdicts are those of a portion of the Jury less than all of you. The verdicts must be agreed upon by each of you and by all of you.

* * * * *

In the United States Court of Appeals for the Fifth Circuit

No. 25625

JAMES WINTFORED REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25919

MARY LEE WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25631

ROBERT LEE FULLER, SR. AND OLIVER LOUIS NIGHTENGALE, SR., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the United States District Court for the Middle District of Florida

(December 5, 1969)

Before TUTTLE, WISDOM and BELL, Circuit Judges.

TUTTLE, Circuit Judge: This is a consolidated appeal from three separate convictions in the United

States District Court for the Middle District of Florida. The appellants were tried before a jury and convicted on various counts of violating U.S.C.A. § 1952.[1]

The appellants, James Rewis, Mary Lee Williams, Robert Lee Fuller and Oliver Nightengale, were indicted with seven other defendants in connection with an alleged numbers operation, which, without dispute, was being conducted at the home of Mary Lee Williams in the town of Yulee, Florida, a small community approximately fifteen miles south of the Georgia-Florida state line. Judgment of acquittal was entered by the trial court as to four defendants and the jury thereafter acquitted two other defendants, but returned

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[1] § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3) shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery or arson in violation of the laws of the States in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury.

guilty verdicts against all of the appellants on various counts of violating this section of the Federal Criminal Code. The government argues that Rewis was the leader of the operation which was being conducted at Mary Lee Williams' home and that the other appellants, Fuller and Nightengale, were connected with the operation as workers or as players. Only Rewis and Williams were Florida residents. Fuller, Nightengale and the other acquitted defendants were Georgia residents. The government's theory was that Fuller and Nightengale actually travelled in interstate commerce with the intent to violate the Florida statute, Section 849.09, outlawing the promoting or conducting of any lottery; that they would be guilty whether they used these interstate facilities for the purpose of coming into Florida and placing bets themselves at the Williams' residence, or were acting as employees of Williams and/or Rewis in the conduct of the operation. The government contends that in either event they would be guilty of the substantive counts for which they were convicted, even though they were both acquitted of the conspiracy count.

The government further contends that whether or not Fuller and Nightengale were proved to have been co-conspirators, nevertheless the conspiracy and substantive charges against Rewis and Williams would stand, because they were shown by ample evidence to have caused Fuller and Nightengale, as well as other unnamed or named travelers from Georgia to patronize the establishment for gambling purposes.

The case against Fuller and Nightengale is very thin, indeed, if it must, as we think it does, depend upon a showing that they were other than bettors themselves.

Whether the reading of the federal statute be casual or intense, it appears that it is not aimed at making a federal crime out of a person's crossing a state line for the purpose of placing a bet, if the placing of such a bet is a crime in the state which he enters. If appellants Fuller and Nightengale are to come within the coverage of Section 1952(a)(3), it would require a broad interpretation of "carry on" or "facilitate." The language of the statute appears clearly to be aimed at those things or people who aid, help or assist the promotion of, or making easier or possible, the illegal actions mentioned in paragraph three. We think that, at the least, the word "facilitate" means, as stated by the Court of Appeals for the Seventh Circuit, in *United States* v. *Miller,* 379 F. 2d 483, at 486, "to make easy or less difficult." We do not believe that the patronizing by interstate gamblers of a gambling establishment fits within the terminology of "promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of any unlawful activity."

It thus becomes unnecessary for us to determine whether the Florida statute which the government contends these two appellants crossed state lines to violate is itself violated by a person's participating as a bettor as distinguished from a person acting in a proprietary manner.

We conclude that the convictions against Fuller and Nightengale cannot stand because there was insufficient evidence to show that they were other than participators in placing bets at the Williams establishment, and, as such, they could not have been found by the jury to have been guilty of any overt act prohibited by the federal statute.

What has been said thus far does not apply to Rewis and Williams. It is not in dispute that these

two appellants were the actual proprietors of a numbers game which was frequented by patrons who crossed the Georgia state line to reach their place. Moreover, there is actual evidence of the participation in the gambling taking place at the Williams' residence by these two particular non-residents, Fuller and Nightengale. There is no merit in the argument, made on behalf of Rewis and Williams, that because we find Fuller and Nightengale were not members of the conspiracy *their* conviction as conspirators should be set aside. The jury verdict need not be construed as holding that Fuller and Nightengale did not utilize the facilities of interstate travel to patronize the gambling establishment operated by these appellants.

Appellants further contend, however, that neither Rewis nor Williams was shown ever to have crossed any state lines in connection with their undoubted violation of the Florida anti-gambling statute. We must thus, therefore, determine whether their conduct in holding themselves out as a place where interstate travelers could place bets was itself a violation of subsection (3) of Section 1952, prohibiting "promoting, managing, establishing, carrying on or facilitating the promotion, management, establishment or carrying on" an activity prohibited by the Florida criminal statutes.

Appellants argue strenuously that the acquittal of the bettor defendants and the failure of the jury to convict Fuller and Nightengale of the conspiracy count, makes impossible a conviction of Rewis and Mary Lee Williams of either the conspiracy to violate the federal statute or the overt act violations for which they were convicted. This, appellants say, follows because this being an interstate conspiracy there must be proof of an interstate overt act to sustain it. We think,

to the contrary, that it is enough to point out that the jury's finding that none of the Georgia defendants joined in the conspiracy with Rewis and Williams is not inconsistent with the jury's verdict that Rewis and Williams agreed to operate a lottery which would be "facilitated" by being patronized by persons coming to it from outside of the state of Florida. Acquittal of those charged with traveling from Georgia does not negate the fact of their travel. It merely negates the mental element of intent to join a conspiracy which was a prerequisite to a conviction on that count. The acquittal of those traveling from Georgia on the substantive counts also does not negate the fact of their traveling and placing bets; it merely negates the fact that such travel and placing bets by these persons did not amount to a violation of Section 1952(3).

The record amply supports the fact that Rewis and Williams, as operators, managers and proprietors of the gambling establishment, were guilty of the conspiracy as charged, and of the overt acts as charged as separate offenses.

Basically what we decide is that the operation by Rewis and Williams of the gambling establishment with full knowledge that it was being maintained largely by the attraction of interstate customers, was sufficient to warrant the jury's finding them guilty of a conspiracy to conduct such an operation and also to find them guilty of the specific charges of substantive acts in violation of the statute which produced their convictions and sentences.

Of course, the government concedes that the conviction on the charge contained in Counts Two and Three as to the wagering stamp tax must fall in light of the Supreme Court's decision in *Grosso* v. *United States,* 390 U.S. 62, (1968), and *Marchetti* v. *United*

States, 390 U.S. 39, (1968). We do not think that the reversal of the conviction on these charges by reason of the Supreme Court's invalidating these provisions of the statute requires a reversal and new trial on the other counts. See *United States* v. *Kelly,* 2 Cir., 1968, 395 F. 2d 727, cert. denied 393 U.S. 963. It appears that the only proof adduced on Counts Two and Three in this case which was not admissible on the other counts as well was the testimony offered to show appellants' failure to register or pay the wagering tax. There was ample proof to show that Rewis and Williams were engaged in the business of gambling, and it is difficult to understand how any prejudice could have resulted from this evidence.

The appellants complain of other matters which the court has carefully considered, but find to be without merit. We have carefully considered each of them and find that they are either without substance or that no prejudice could have resulted from the action taken by the trial court.

The one point of significance on this appeal is the question whether the attraction by Rewis and Williams of interstate gamblers to their place near the state boundary comes within the definition of the crime described in Section 1952. This question is not entirely free from doubt, but is solely a matter of construction of the statute. We conclude that the conduct of these appellants caused the interstate travel by those who placed bets with them, and thus came within the prohibition of the statute. While not entirely analogous, the following cases may be cited as giving some support to this conclusion: *United States* v. *Barrow,* 212 F. Supp. 837, aff'd 363 F. 2d 62 (3 Cir., 1964); *United States* v. *Kelley,* 2 Cir., 1968, 395 F. 2d 727, cert, denied 393 U.S. 963. We think that the gambler operators of the gambling establishment are respon-

sible, under the terms of this statute, for the use of interstate facilities, by way of interstate travel, of those whose participation is vital to the success of his business.

The judgments are AFFIRMED.

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1969

No. 25625

(D. C. Docket No. 66-65-CR-J)

JAMES WINTFORED REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Middle District of Florida

Before TUTTLE, WISDOM and BELL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

DECEMBER 5, 1969.

Issued as Mandate:

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1969

No. 25919

(D. C. Docket No. 66-65-Cr-J)

MARY LEE WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Middle District of Florida.

Before TUTTLE, WISDOM and BELL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

DECEMBER 5, 1969.

Issued as Mandate:

[U.S. Court of Appeals, Filed April 7, 1970, Edward W. Wadsworth, Clerk]

In the United States Court of Appeals for the Fifth Circuit

No. 25625

JAMES WINTFORED REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25919

MARY LEE WILLIAMS, APELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the United States District Court for the Middle District of Florida

(April 7, 1970)

ON PETITION FOR REHEARING

Before TUTTLE, WISDOM and BELL, Circuit Judges.

Per Curiam:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS AND MARY LEE WILLIAMS, PETITIONERS

v.

UNITED STATES

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

On CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

OCTOBER 12, 1970.

U. S. GOVERNMENT PRINTING OFFICE: 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS and
MARY LEE WILLIAMS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

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No. 5342

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v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINION BELOW

The opinion of the Court of Appeals (Appendix) is reported at 418 F.2d 1218.

JURISDICTION

The opinion and judgment of the Court of Appeals were entered on December 5, 1969. A timely petition for

rehearing was denied on April 7, 1970. By order of Justice Black the time for filing a Petition for Writ of Certiorari was extended to June 5, 1970. The petition was transmitted on Thursday, June 4, 1970, and was received and filed June 8, 1970. It was granted October 12, 1970. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

WHETHER INTERSTATE CHARACTER IS BESTOWED UPON AN INTRASTATE NUMBERS GAME BECAUSE PLAYERS, NOT OTHERWISE INVOLVED IN THE GAME, CROSS STATE LINES TO PLAY?

STATUTE INVOLVED

Section 1952 of Title 18, United States Code (sometimes called the Travel Act, or Anti-racketeering Act):

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to–
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000.00 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of

the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury. Added Sept. 13, 1961, Pub. L. 87-228, § 1(a), 75 Stat. 498, amended July 7, 1965, Pub. L. 89-68, 79 Stat. 212.

STATEMENT OF THE CASE

James Rewis and Mary Williams were found guilty of traveling and causing travel in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on, of an unlawful gambling activity (lottery) in Florida.[1]

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[1] 18 U.S.C. § 1952: Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3) shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the States in which committed or of the United States.

They were convicted of that offense in each of eight substantive counts of the indictment charging the offense on various Saturdays between May 8, 1965, and August 14, 1965. Rewis and Williams were also found guilty of conspiracy (to commit the substantive offenses).[2] Rewis was sentenced to serve a term of five years imprisonment (five years on each count to run concurrently); Mary Williams was sentenced to serve three years imprisonment (three years on each count to run concurrently).

Mary Williams maintained a residence in a cluster of small small homes in a small rural community at Yulee, Florida, approximately fifteen miles south of the Georgia State line. During the period of time covered by the indictment, she sold lottery tickets from her home to various persons who would come there to purchase them. Among the numbers purchasers, or bettors, were some persons who lived just across the Georgia border and would drive automobiles to the Mary Williams home for the purpose of placing bets with her. The bets were relatively small.[3] The lottery was

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(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury.

[2]The indictment contained eighteen counts: the one conspiracy count, two gambling stamp counts (26 U.S.C. § 7203) [Rewis' conviction of the gambling stamp counts was reversed on authority of *Grosso v. United States*, 390 U.S. 62, and *Marchetti v. United States*, 390 U.S. 39], and fifteen substantive counts (18 U.S.C. § 1952). In addition to Rewis and Williams, eight other persons were charged as co-defendants in the indictment. Of these, motions for judgment of acquittal were granted as to four; the jury returned a verdict of not guilty as to two; and, the Court of Appeals for the Fifth Circuit reversed as to two.

[3]The largest bet on any one number was $5.00 (Tr. 670) and for the two hours on Saturday morning when most of the business was conducted, a total of $75.00 was taken in (Tr. 636). The week's receipts from the Williams house on the day the arrests were made was $153.00 (Tr. 1477); at the time of the arrest Rewis had $1,541.00 in his pocket (Tr. 2044).

one known as "Cuba" in which the winning number was drawn weekly on a Saturday afternoon. Rewis went to Mary Williams' home during late morning each Saturday; he would pick up the lottery tickets for the previous week's business and depart (Tr. 638, 666 thru 668).

The six acquitted defendants were Georgia residents whose automobiles had traveled across the State line on various Saturdays and were traced to the Mary Williams home. Neither Rewis, nor Mary Williams, both Florida residents, had crossed any State lines, nor was there any other evidence of interstate character than the travel by the acquitted defendants.

At the trial, Rewis and Williams contended that there was no evidence of an interstate nature to justify a conviction under § 1952. They acknowledged that there was evidence of bettors' travel across the State line to place wagers at the Mary Williams home, but maintained that bettors could not be convicted under the Florida gambling statute and if they could not be convicted the government's case must fail. The trial judge disagreed and, in fact, instructed the jury, "You are instructed that the statute just read may be violated by 'buyers' or 'players' (Tr. 2562). The trial judge refused to permit counsel to argue to the jury that the bettors' travel did not bring Rewis and Williams within the proscriptions of the federal statute (Tr. 2269 thru 2277).

The Fifth Circuit agreed with the defense contention that § 1952 does not apply to the bettors of a gambling operation and reversed as to two convicted defendants upon the theory that the only evidence against them was that they were bettors. The Court affirmed as to Rewis and Williams, however, upon the theory that Rewis and Williams had attracted the out-of-state bettors to the Florida lottery and that by doing so they had themselves come within the proscriptions of § 1952 because they "agreed to operate a lottery which would be 'facilitated' by being patronized by persons coming to it from outside of

the State of Florida." (Appendix–Opinion of Court of Appeals for the Fifth Circuit.)

SUMMARY OF ARGUMENT

The Travel Act condemns travel in interstate or foreign commerce with intent to commit certain specified unlawful activities among which is gambling. The petitioners, James Wintfored Rewis and Mary Lee Williams, conducted a small gambling operation (lottery) in a rural community approximately fifteen miles south of the Georgia State line. The only evidence of travel in interstate commerce was the movements of a relatively small portion of customers of the gambling operation who traveled from Georgia to Florida to place bets at the Williams home.

The opinion of the Fifth Circuit acknowledged that the bettors could not be guilty under the statute, but affirmed the convictions of Rewis and Williams upon the theory that, by placing their gambling operation in Florida fifteen miles away from the Georgia border they had "attracted" Georgia players and thus the interstate travel element of the offense was supplied.

This novel construction of the statute greatly broadens and extends the federal criminal jurisdiction to the point that a person committing any of the specified unlawful activities will be brought within the federal jurisdiction if a "customer" of a gambling, liquor, narcotics, or prostitution enterprise travels in interstate commerce. Neither the statutory verbiage nor the intent of the Congress justifies such interpretation.

ARGUMENT

THE FIFTH CIRCUIT'S CONSTRUCTION OF 18 U.S.C. SECTION 1952 (TRAVEL ACT) DRASTICALLY BROADENS AND EXTENDS FEDERAL JURISDICTION BEYOND THAT REQUIRED BY THE STATUTORY VERBIAGE OR THE INTENT OF THE CONGRESS.

The statute, insofar as here pertinent, prohibits travel in interstate commerce with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any business enterprise involving gambling, certain liquor, narcotics or prostitution offenses in violation of State laws. This statute was enacted in 1961 at the request of the Attorney General to combat "organized crime and racketeering" (Senate Report No. 644, 87th Cong. 1st Sess., 1961). One of the essential elements of the crime created by the statute is travel in interstate commerce.

The only trial evidence of interstate travel consisted of that of nine persons (eight defendants and a non-defendant witness). The trial judge found that there was insufficient evidence that four of these persons traveled in connection with the gambling activity and accordingly granted motions for judgment of acquittal (Tr. 2015). There was evidence that the other four defendants and the non-defendant witness traveled from Georgia to Florida for the purpose of buying lottery tickets for themselves; however, the jury acquitted two of them (Tr. 2621, 2622). The remaining two were convicted upon instructions from the trial judge that players or bettors could be guilty under the statute; but, the Court of Appeals for the Fifth Circuit construed Section 1952 not to proscribe the activities of the lottery bettors and reversed as to them—leaving only Rewis and Williams under judgments of guilt.

In order to affirm the convictions of James Rewis and Mary Williams, the Court below had to find, and did find, that the operation of the Florida lottery, fifteen miles from

the Georgia State line "attracted" the players from Georgia to Florida and although the players themselves could not be guilty of violating the statute, their travel supplied the necessary evidence to sustain the guilty verdict.

The statute does not specifically condemn the action of one who attracts a gambler, prostitute's customer, narcotics user, or liquor buyer, to travel in interstate commerce. It is therefore necessary to inspect the statute to determine if such interpretation might be inferred from its language and if it may and the language is vague, was it the intent of Congress that the statute should be so construed? In this regard legislative history is relevant. *United States v. American Trucking Assoc.*, 310 U.S. 534, 542-544; *United States v. Dickerson*, 310 U.S. 554, 562; *Commissioner v. Estate of Bosch*, 387 U.S. 456, 463.

The words of the statute neither require nor permit the "attraction" theory. The statute proscribes certain activities by someone who "travels in interstate or foreign commerce."[4] It appears that the interstate commerce feature was inserted to bring the statute within the authority of the Congress to regulate commerce between the states; thus the interstate travel is an essential element of the offense.

The interpretation that the bettors or players do not violate the statute is amply supported by the legislative history of the act, infra.

If the Congress had intended the statute to be violated by one who causes another to travel in interstate commerce for the purpose of participating in the "unlawful activity" it would have said so. Even then there would be some

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[4]The statute goes on "* * * or uses any facility in interstate or foreign commerce * * *." The indictment, in the substantive counts, charged "travel" only; and the use of interstate facilities was stricken from the conspiracy count. Thus, this portion of the statute is not involved here.

question as to the sufficiency of such causation by the mere existence of the unlawful activity in a location where interstate travelers might find it available.

The bettors in this case were ordinary arms-length customers. So far as can be told from the evidence they decided for themselves if, when, whether, where, how, how often, and how much they would bet. Neither Rewis nor Williams had any power of command or supervision over them. They did not represent Rewis or Williams or act on behalf of them in any way. Nor were they in the employ of either Rewis or Williams, or performing any service for them. Yet, the effect of the Fifth Circuit opinion is that Rewis and Williams are criminally responsible for the travel of their customers.

The Fifth Circuit opinion concludes that Rewis and Williams "caused" the interstate travel of those who placed bets with them. The statute does not contain the word "cause." The statute simply says whoever "travels." An individual can become criminally liable under § 1952 for causing travel only by the operation of 18 U.S.C. § 2:

> "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> "(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Section 2(b) is the general criminal statute which is plainly directed at the classic agent-principal situation and was obviously passed for the purpose of making the moving parties in a federal crime fully responsible for the crime even though they have arranged for the direct or physical commission of the offense to be done by someone else. The statute was never intended to have such broad, far-reaching meaning as to be the crutch to uphold the Fifth Circuit opinion in this case which carries the concept of causation to its furthest logical limits—further than would

be permitted in a civil case under the tort theory of proximate cause. Rather, as pointed out in *Pereira v. United States*, 202 F.2d 830, 837 (5th Cir. 1953), "* * * Section 2(b) does not enlarge criminal liability, but is merely a restatement of existing law." This statute only applies when the agent himself commits a crime caused by his principals. If the act of the agent would not constitute a crime, even if it had been committed by the principal, then no crime exists. Section 18 U.S.C. 2(b) does not create a crime when one does not exist. Here, the bettors who crossed the State line did not commit an offense, therefore, one who would "cause" them to cross a State line would not have committed an offense.

The "attraction" theory upon which the Fifth Circuit opinion is based has vast implication, the effect of which is to confer federal jurisdiction in a multitude of circumstances where such federal jurisdiction was not heretofore considered to be vested. Any situation involving gambling, liquor, narcotics, prostitution, extortion, bribery or arson, where the perpetrator of the State crime has some reason to believe that a customer or victim has crossed a State line would thus come within federal jurisdiction. Almost every principal tourist resort would be subjected to as much federal policing as it would state policing; the tourist hotel bridge player who engages out-of-state guests in a bridge game for money; the backroom poker player where out-of-state guests participate in the game; the hotel prostitute who should know that her customer is from another State; the bar girl where unlawful liquor is being sold. Nor does a tourist resort have to be involved. The unlawful activity need only be near a highway traveled by interstate travelers or located in an area where out-of-state people are likely to visit. Basic law enforcement by federal officers would be extended to places where interstate travel is part of the regular movement of the populace, such as New York City, Chicago, Philadelphia, Los Angeles, New Orleans, San Francisco. A myriad of other circumstances, limited only by man's imagination, would thus come within federal jurisdic-

tion. It is not necessary that the travel be with the intent to commit the crime, it is only necessary that the unlawful activity be incidental to the interstate travel, *United States v. Carpenter*, 392 F.2d 205 (6th Cir. 1968), nor is it necessary under the Fifth Circuit opinion that the defendant have actual knowledge that the customer or player traveled in interstate commerce, it is only necessary that the defendant place his unlawful activity in such a position that interstate travelers may want to utilize it.

Indeed, almost all of the foregoing instances previously were considered to be "police court" or "magistrate court" offenses. In the short period of time since the enactment of 18 U.S.C. § 1952, this petty offense theory has gradually crept into the statute: in *United States v. Brennen*, 394 F.2d 151 (2nd Cir. 1968), passengers on an interstate excursion ferry back and forth from New Jersey to New York regularly carried on a large stakes gambling card game; in *South v. United States*, 368 F.2d 202 (5th Cir. 1966), a professional gambler waited around a bar to pick up card players (his conviction was reversed only because checks which were transmitted in interstate commerce in payment of the gambling debt were not traceable directly to the defendant); in *United States v. Chambers*, 382 F.2d 910 (6th Cir. 1967), the operator of a house of prostitution in Covington, Kentucky, because taxi drivers frequently transported his customers across the river from Cincinnati, Ohio; in *United States v. Carpenter*, 392 F.2d 205 (6th Cir. 1968), the defendant worked in a gambling house in Tennessee, but occasionally went to Georgia to visit his children in the custody of his separated wife where his travel back to Tennessee was held to violate the statute.

The implications of the Fifth Circuit opinion are even greater when the extent of the "attraction" by Rewis and Williams is considered. The Williams house, where the gambling occurred, was one of five or six homes in a small group of homes at a diminutive community known as Yulee, Florida, situated at the crossroads between Fernan-

dina, Florida, and Jacksonville, Florida, but also situated about a half mile from the highway which led to Georgia (Tr. 685, 686). The trial evidence reflected that numerous people engaged in betting at the Mary Williams home, the Georgia players were only a small portion of them. There was no evidence of any advertising or attempts by Williams or Rewis to induce out-of-state travelers to come to the Williams home. The only attraction was the geographical location, approximately fifteen miles from the State line and farther to the nearest Georgia town. When this factor is considered the "attraction" theory would subject to Federal prosecution any person who operated any of the specified unlawful activities in any border town, or in any other location where out-of-state travelers are known to be predominant. This interpretation of the statute raises obvious questions which would test its definiteness within constitutional limitations. What scienter is required of the perpetrator? Must he have actual knowledge that interstate travelers are participating in his unlawful activity? Is it sufficient that there is simply a probability that the unlawful activity will attract interstate travelers? What distance from a State border will justify the inference that a gambler (or other violator of the statute) could expect his unlawful activity to attract interstate travelers? In the case at bar, fifteen miles was considered sufficient. Surely this was not the intent of the Congress.

Incorporated in the Senate report (Report No. 644, 87th Cong. First Sess. dated July 27, 1961) the following appears:

> "The bill, S. 1653, was introduced by the Chairman of the Committee, Senator James O. Eastland, on April 18, 1961, on the recommendation of the Attorney General, Robert F. Kennedy, as a part of the Attorney General's legislative program to combat organized crime and racketeering.
>
> "The Attorney General testified before the committee in support of the bill, S.1653, on June 6, 1961, and commented:

'* * * *we are seeking to take effective action against the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, as well as against other hoodlums.*

'*Let me say from the outset that we do not seek or intend to impede the travel of anyone except persons engaged in illegal businesses as spelled out in the bill.* * * *

'*The target clearly is organized crime.* The travel that would be banned is travel "in furtherance of a business enterprise" which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery. Obiouvly, we are not trying to curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise.'

* * * * *

'Our investigations also have made it quite clear that only the Federal Government can shut off the funds which permit the top men of organized crime to live far from the scene and, therefore, remain immune from the local officials. So we believe that the Federal Government has a definite responsibility to move against these people and limit their use of interstate commerce.'" (Emphasis supplied)

Also contained in the same report is a letter from the Attorney General to the Vice-president of the United States, in which the following appears:

"The bill which I submit to the Congress would impose criminal sanctions upon the person whose *work* takes him across State or National boundaries in aid of certain 'unlawful activities.' These are defined in the bill as business enterprises involving gambling, liquor, narcotics, or prostitution activities which are offenses under Federal law or the law of the State where they are committed, and extortion and bribery. The bill would also have the effect, through its interaction with Section 2 of Title 18, United States Code, of prescribing penalties for persons who send others on similar missions. Such violations would be punishable by a fine as high as $10,000 or a prison term of up to five years or both.

> "The effect of this legislation would be to impede the clandestine flow of profits from criminal ventures and to bring about a serious disruption in the far flung organization and management of coordinated criminal enterprises. It would thus be of material assistance to the States in combatting pernicious undertakings which cross State lines." (Italics supplied)

When the legislation was being considered in the House of Representatives, Representative Harris in a colloquy with Representative Celler, to establish a legislative purpose in the Congressional Record, stated that the bill "has for its purpose dealings with certain syndicated crime" and that, "It is not to go beyond matters of syndicated crime." See, 1961 Congressional Record–House, Page 16541. During the same colloquy a letter from Senator John L. McClelland and Representative Oren Harris to the Attorney General was placed in the Congressional Record. In that letter the writers announced, "We understand from your testimony before the Senate and House Judiciary Committee that the primary purpose of this bill is to provide a Federal law 'to take effective action against the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, immune from the local officials.' * * *" The remainder of the letter and the Attorney General's reply is significant.[5]

[5] "The questions that have arisen concern those business enterprises all of whose owners are bona fide residents of the State in which the business is located and which business provides legitimate dining facilities, shows, dancing, and other entertainment, and also offers or permits in connection therewith gambling in violation of State laws. Specifically, if S.1653 is finally enacted, will it prohibit and make unlawful the activities of such business enterprises as follows:

"(a) Presenting entertainment and transporting in interstate commerce property of any kind to be used in such entertainment or contracting for or paying fees, purchase price, rental or other expenses, and liabilities incurred in arranging for or presenting such entertainment.

"(b) *Advertising across State lines the legitimate activities such as shows, dining, dancing, and other entertainment if such advertising*

The Congress was concerned about the extent to which the statute might be construed to apply. It is seen that

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does not specifically mention or refer to the gambling opportunities or activities.

"(c) Ordering, purchasing, leasing, renting, otherwise acquiring, delivery or accepting delivery of any food, beverages, supplies, materials, equipment, furniture, furnishings, and other property in interstate commerce, to be used in the operation of legitimate activities, such as shows, dining, dancing, and other entertainment, but not to be used directly in the operation of gambling activities.

"(d) Cashing checks, drafts, or money orders of customers or patrons of the business enterprise, depositing such checks, and/or making collection or causing collection to be made of such checks, drafts, or money orders, or making collection of accounts of customers or patrons of such business enterprise, by use of the mail or otherwise in interstate commerce.

"It is our understanding that it is not the intention of the sponsors of S.1653 to have it cover and apply to the foregoing. If it is so intended and does apply, we should like to be so advised.

"Sincerely yours,

JOHN L. McCLELLAN
OREN HARRIS" (Emphasis supplied)

"OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., August 21, 1961.

"Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

"DEAR CONGRESSMAN: This is in response to your letter of August 18, 1961, requesting my views as to the scope of S.1653 a bill 'to prohibit travel or transportation in commerce in aid of racketeering enterprises'.

* * * * *

"An example of the type of activity which we consider to be within the purview of the statute would be travel to promote a continuous course of conduct involving gambling. Thus a gambling house would be within the definition of unlawful activity in the bill and any travel on the part of any person with the intent to establish a gambling house and a further act subsequent to the travel to promote that activity would be a violation of the section. Travel, to promote a legitimate business which may thrive because a gambling house is in the area, would not, in my opinion, violate the section.

enticing gamblers across State lines by providing supper clubs and entertainment for their "attraction" was not intended to be a violation.

Neither Rewis nor Williams ever crossed a State line in connection with their operation of the small Florida lottery. Although the issue is only incidentally involved here there is no evidence of "organized crime" as that elusive term may be defined. There is no evidence that either Rewis or Williams was a "racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, immune from the local officials." It is not necessary, however, to define "organized crime" in this case. The legislative history shows that there was no intention by the Congress to condemn those who attract others across a State line to participate in an unlawful activity."

In summary it was intended to prohibit the travel to promote the gambling house, directly, and not to prohibit the travel to promote a hotel or supper club or any other legitimate business.

"In view of the foregoing, it is my opinion that making arrangements for entertainment in business establishments such as supper clubs, hotels, or motels which businesses are legitimate in the community or the advertising of those legitimate businesses or the purchasing of food or beverages or the collection of checks by legitimate banking houses through the medium of interstate commerce would not come within the intended prohibitions of the section."

CONCLUSION

The opinion of the court below which announces that the "travel" necessary to bring a person within the proscriptions of 18 U.S.C. § 1952 is proved by the placing of an unlawful activity in a geographical location so that out-of-state customers might be attracted to it, should be rejected and the judgment reversed.

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Counsel for Petitioners

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CITATIONS

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Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS AND
MARY LEE WILLIAMS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (A. 51–58) is reported at 418 F. 2d 1218.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1969. A petition for rehearing was denied on April 7, 1970. Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including June 5, 1970. The petition was filed on June 5, 1970 and was granted on October 12, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was sufficient evidence to show that petitioners caused travel in interstate commerce with intent to promote, carry on, or facilitate their gambling establishment.

STATUTES INVOLVED

18 U.S.C. 2 provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. 1952 provides in pertinent part:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

STATEMENT

Petitioners and nine other individuals were indicted in the Middle District of Florida for various offenses in connection with the operation of a lottery (A. 7–32). Counts 6 through 18 charged them with causing travel from Camden County, Georgia to Nassau County, Florida to facilitate an interstate gambling enterprise in violation of 18 U.S.C. 1952.[1] Each count was based on travel on one of thirteen successive Saturdays between May and August 1965. Petitioners were also charged with conspiracy to commit these offenses. Following a jury trial, petitioners were convicted of eight substantive violations and of conspiracy. Petitioner Rewis was sentenced to five years' imprisonment on each count, to run concurrently. Petitioner Williams was sentenced to three years' imprisonment on each count, to run concurrently, sub-

[1] All defendants were Georgia residents except for the petitioners, Rewis and Williams, and Rewis' wife, who were Florida residents.

ject to parole under 18 U.S.C. 4208(a)(2).[2]

The evidence at trial showed that the home of petitioner Williams, which was located in a cluster of six houses in Yulee, Florida, 12 to 13 miles south of the Georgia line, was used in a lottery operation (T. 687–688, 1052).[3] The winning number of this lottery was determined each Saturday at 2:00 p.m., when the results of the National Lottery of Cuba were announced (T. 1773–1774).

Between May 8 and August 14, 1965, FBI agents conducted a surveillance of the Williams home. They found that it was being visited on Saturday mornings by persons driving cars bearing Georgia license plates (T. 815–818, 823–827, 838–846). The surveillance at the house (T. 884–888, 959–970, 1005–1008) and at the state line (T. 904–910, 947–954) revealed that certain of the defendants originally named in the indictment and others typically crossed into Florida, drove to the house, remained inside for a short time (usually about

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[2] Of the other defendants, Rewis' wife received a continuance prior to trial because of health (Docket Entry, September 11, 1965); four defendants (E. Owens, Dawson, Sullivan, and Smith) were acquitted at the end of the government's case (T. 2073); two (T. Owens and Powell) were acquitted by the jury (T. 2621–2622); and the court of appeals reversed the convictions of two (Fuller and Nightengale) who had been found guilty of substantive violations, on the ground that the evidence at trial was insufficient to show that they were more than customers of the gambling enterprise (A. 54). Rewis' convictions on two counts of having failed to purchase a wagering tax stamp were reversed under *Marchetti* v. *United States*, 390 U.S. 39, and *Grosso* v. *United States*, 390 U.S. 62.

[3] "T." refers to the transcript of the trial, a copy of which is on file with the Clerk.

fifteen minutes) and then returned to Georgia before the results of the lottery were announced. On an average, 8 to 9 automobiles came to the residence each Saturday, and generally the same persons visited the premises on a regular basis (T. 825–826, 841–846, 885–888, 961–967, 1020, 1029–1033, 1047–1051, 1083–1089, 1092–1105, 1175–1184, 1203–1211, 1221–1229, 1243–1250, 1324–1329, 1335–1339). At least four of the travelers came from Kingsland, Georgia, just across the state line. The flow of predominantly interstate traffic in and out of the Williams house continued (T. 1019–1023, 1029–1033, 1047–1051, 1055–1060, 1070, 1073–1075, 1083–1089, 1092–1105, 1112–1115, 1175–1187, 1203–1211, 1221–1229, 1243–1251, 1254–1257, 1272–1276, 1281–1298) through the morning of August 14, 1965, when FBI agents raided the residence (T. 1310–1313, 1318–1321, 1323–1329, 1335–1339).

During the surveillance period, petitioner Williams was at home in the house every Saturday, except for the day of the raid, when she was at a funeral (T. 634). Petitioner Rewis and his wife arrived at the Williams residence each Saturday at approximately 11:30 a.m. and departed within one-half hour (T. 845, 887, 952–953, 965–966, 1050, 1087–1088, 1095–1096, 1208–1209, 1225–1226, 1248, 1250, 1328–1329, 1338–1339). Some of the travelers were present at the house at the same time as Rewis (see e.g. T. 965–966, 1050, 1087, 1208, 1224–1226, 1248–1249, 1327–1328). After Rewis departed, he made a telephone call from a highway booth (T. 952–954, 1087–1089, 1250, 1258–1259, 1276–1277, 1285–1286, 1313–1317, 1329), and during

the conversation he referred to a clipboard containing sheets of paper (T. 1258, 1313–1316).

Numerous items of gambling paraphernalia (T. 1401–1407, 1412, 1414–1417, 1419–1421, 1422–1426, 1428–1429, 1431–1437, 1441–1461, 1538–1546, 1551–1556) seized under warrants during the August 14 raid of the Williams house were introduced into evidence (T. 1736–1738). As the agents entered the residence, Rewis attempted to dispose of a "recap sheet" (T. 1419–1420, 1580–1583, 1788–1789). The "recap sheet" (Exh. 41C) showed that the enterprise employed at least three different groups of sellers, totaling of at least twenty individuals, in addition to runners or pick-up men whose function it was to deliver the bet slips from each group of writers to the numbers bank (T. 1799, 1808–1809). The agents found $1,553.61 in cash and various slips of paper containing figures and amounts on Rewis' person (T. 1564–1572). They also found that his automobile contained $104.00 in cash, a clipboard with papers on which numbers were recorded, and approximately 372 lottery tickets arranged in packets (T. 1603–1611).

An expert testified that a lottery of this type generally sold numbers on Saturday, the same day that the winner was drawn. He said it usually required a seller who sold numbers and a "pick-up man" who took lists of numbers sold to a "check-up house," where he turned them over to the operator (T. 1772–1781).

Dorothy Mae Evans, an employee of the lottery who worked at the home of petitioner Williams, testified

that she wrote tickets there. She said that she recorded individual bets on a "ticket" pad. There were two carbons of the "ticket," one of which was given to the bettor and the other placed in a cigar box (T. 639–640, 665). She stated that on four or five occasions co-defendant Nightengale visited the house and "left a ball of little paper with rubber around it" in the cigar box (T. 642, 644). She also testified that co-defendant Fuller had left a piece of paper with numbers and different prices on it. She did not know whose bets were on these slips, but she or petitioner Williams entered information from them on a single ticket from the same pad used for individual bets (T. 645–647). Witness Evans recalled that she once had accepted $80 from Fuller along with his sheet. She also recalled that T. Owens, another co-defendant, had presented "2 or 3 little pieces of paper" and that she had obtained $30 from him. (T. 717). She testified she considered Fuller and Owens to be bettors or buyers (T. 684, 690).

Charlotte Williams, one of the individuals who had traveled from Georgia to the lottery establishment, also testified as a government witness. She had known petitioner Williams for "a good while" (T. 737) and had been at or near the Florida residence on at least seven occasions during the surveillance period (T. 886, 907–908, 950, 965, 1022, 1225, 1248, 1297, 1312, 1320, 1327–1328). When this witness was arrested en route to the Williams residence on the day of the raid, she had, in her pocketbook, a lottery ticket with numbers on it and a sheet of numbers (T. 736, 739, 743–745).

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She said that she was traveling to the residence to make a second purchase because she did not know anybody in Georgia from whom to buy numbers (T. 739, 763).

The district court instructed the jury in effect that "buyers" or "players" in a lottery violated the Florida gambling law and that if they traveled interstate, they also violated 18 U.S.C. 1952 (A. 36-39).[4] It further charged that a defendant could be found guilty, as a principal under the aiding and abetting statute, 18 U.S.C. 2, without proof that he "personally did every act constituting the offense charged" (A. 38).

The court of appeals held that 18 U.S.C. 1952 did not make it a federal crime for a person to cross a state line for the purpose of merely placing a bet. Consequently, it did not address itself to the question whether the Florida statute is violated by a bettor, as distinguished from a person acting in a proprietary manner. The court held there was insufficient evidence that defendants Fuller and Nightengale were more than mere bettors at the Williams establishment and, accordingly, reversed their convictions (A. 54).

The court pointed out, however, that petitioners Rewis and Williams "were the actual proprietors of a numbers game which was frequented by patrons who crossed the Georgia state line to reach their place." (A. 55). It upheld their convictions, stating:

[4] The assistant United States Attorney in his closing statement argued "that it makes no difference whether you are coming across the state line to purchase or whether you're coming across to turn in business as a writer * * *. Anyone who travels in interstate commerce to carry on that type activity is covered under the statute (T. 2367-2368).

> **The one point of significance in this appeal is the question whether the attraction by Rewis and Williams of interstate gamblers to their place near the state boundary comes within the definition of the crime described in Section 1952. The question is not entirely free from doubt, but is solely a matter of construction of the statute. We conclude that the conduct of these appellants caused the interstate travel by those who placed bets with them, and thus came within the prohibition of the statute. [A. 57.]**

ARGUMENT

INTRODUCTION AND SUMMARY

The issue in this case is the sufficiency of the evidence to support petitioners' conviction under the Travel Act, 18 U.S.C. 1952, for conspiracy to cause interstate travel and for causing interstate travel to further an illegal activity, a gambling enterprise in violation of the laws of Florida. There is no dispute that petitioners operated an illegal lottery in Florida and that various persons regularly came from Georgia to the place of that operation in Florida. The question is whether petitioners caused that travel. While the evidence suggests that at least some of those regular visitors were "runners," the case was tried on the theory that it made no difference whether the travelers were runners or players.

Petitioners argue that the Travel Act does not apply in circumstances where the only interstate movement is by customers of an illegal operation.

Depending on the circumstances, however, we urge that the Act may be violated when the interstate element of the violation is supplied by the customer of an illicit commodity or service. If the operators of an illegal establishment merely locate their business near a highway where interstate travelers may happen to drop in, they do not, without more, cause the travel and we agree that the Travel Act is not violated. But if the operator of an illegal establishment actively seeks to attract business from out-of-state or can reasonably foresee that the customers will cross state lines for the specific purpose of patronizing his illegal establishment, we contend he has caused interstate travel and consequently is liable under the Act. By that test, the evidence in this case is sufficient. Although there is no direct proof of petitioners' active solicitation of travel from Georgia, the location of their enterprise, the regularity of the out-of-state visits and other circumstances justify the inference that the travelers from Georgia, whether runners or players, came to the establishment by pre-arrangement with petitioners.

I. THE TRAVEL ACT IS VIOLATED BY A PERSON WHO, IN ORDER TO FACILITATE OPERATION OF HIS ILLEGAL ENTERPRISE, CAUSES INTERSTATE TRAVEL BY OTHERS.

1. The Travel Act makes it a crime for any person to travel in interstate commerce or use any facility in interstate commerce with intent to promote, carry on, or facilitate the carrying on of certain enumerated business enterprises and other activities in violation of state law. The enterprises are those which involve gam-

bling, liquor on which federal excise taxes have not been paid, narcotics or prostitution. The statute also embraces extortion, bribery and arson. It is, of course, not necessary for an individual personally to travel or use interstate facilities to violate the statute. Under the general aiding and abetting statute, 18 U.S.C. 2, a person commits a federal offense if he causes others to do so as a means of furthering his illegal activity. See *Pereira* v. *United States,* 202 F. 2d 830, 836–837 (C.A. 5), affirmed, 347 U.S. 1; *United States* v. *Leggett,* 269 F. 2d 35, 37 (C.A. 7).

The aiding and abetting statute imposes liability for a range of acts by which an individual assists or brings about commission of an offense or certain elements of an offense by another. The classic example is the relation of principal and agent or employer and employee, in which both parties are criminally liable. Thus, in *United States* v. *Chambers,* 382 F. 2d 910 (C.A. 6), taxicab operators who brought customers across a state line to a house of prostitution supplied the element of interstate travel which rendered them, as well as the operator of the house, guilty of violation of the Travel Act. And it is established that the Act is violated when an operator of a gambling house in one state employs persons residing in another who travel from their homes to the gambling establishment; by furnishing employment, the operator causes interstate movement of the employees to the gambling house in aid of the enterprise. See, *e.g., Bass* v. *United States,* 324 F. 2d 168, 171–172 (C.A. 8); *United States* v. *Zizzo,* 338 F. 2d

577, 580 (C.A. 7), certiorari denied, 381 U.S. 915; *United States* v. *Barrow*, 363 F. 2d 62, 64–65 (C.A. 3), certiorari denied, 385 U.S. 1001.

The aiding and abetting statute also applies where the person who performs an essential element of an offense is not himself guilty of the crime with which the person who caused him to act is charged. Indeed subsection (b) of the statute, *supra*, p. 2, which makes liable a person who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States," was added in 1948 to make it clear that the coverage of the statute extends to such a situation. The Reviser's Note to Section 2 specifically confirmed that the new subsection "removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense." See *United States* v. *Inciso*, 292 F. 2d 374, 378 (C.A. 7), certiorari denied, 368 U.S. 920; *Pereira* v. *United States*, *supra*, 202 F. 2d at 837.

A person, then, who is involved in illegal activity may cause another to use an interstate facility or to travel interstate, and thereby trigger federal jurisdiction, even though the other person is an innocent agent. See *United States* v. *Kenofskey*, 243 U.S. 440; *Hagner* v. *United States*, 285 U.S. 427; *United States* v. *Gooding*, *12 Wheat*, 460, 469. Indeed, the person may even be the victim of the illegality. For example,

it has long been held that use of the mails by a mail fraud victim in connection with the fraudulent scheme supplies the essential element of a violation of the mail fraud statute, 18 U.S.C. 1341. See, *e.g., Anderson* v. *United States,* 369 F. 2d 11, 15 (C.A. 8), certiorari denied, 386 U.S. 976; *United States* v. *Sorce,* 308 F. 2d 299, 300–301 (C.A. 4), certiorari denied, 377 U.S. 957. Similarly, it seems obvious that a person engaged in extortion will not escape liability under the Travel Act if, rather than traveling across a state line to collect from his victim himself, he forces or induces the victim to come to him to pay. Subsection (b) would apply to the extortionist since he caused interstate travel which furthered his scheme.

The same principle applies equally when the person who supplies the essential element of a federal violation is a knowing and willing participant though not himself guilty of the offense. A procurer of prostitutes who travel across state lines at his request is guilty of violation of the Mann Act, even though they are not themselves guilty of a violation. *Harms* v. *United States,* 272 F. 2d 478 (C.A. 4); *Bell* v. *United States,* 251 F. 2d 490, 492 (C.A. 8). In *United States* v. *Kelley,* 395 F. 2d 727 (C.A. 2), certiorari denied, 393 U.S. 963, there was an arrangement whereby bettors from other states called a telephone number in New York to make known their desire to place a bet. This use of an interstate facility by gambling customers was held to be a sufficient basis for conviction of the operator of the illegal enterprise under the Travel Act. The court explained:

> A person may be held responsible as a principal under 18 U.S.C. § 2(b) for causing another to do an act which would not have been criminal if directly performed by that other person. *United States* v. *Lester*, 363 F. 2d 68, 72–73 (6th Cir. 1966), cert. denied, 385 U.S. 1002. * * * The evidence showed that appellant told these bettors how to get in touch with him if they wished to make a bet and, therefore it was reasonable to expect that they would make interstate calls.* * * *United States Scandifia*, 390 F. 2d 244 (2d Cir. 1968); *Bass* v. *United States*, 324 F. 2d 168 (8th Cir. 1963). [395 F. 2d at 729.]

The facts here are analogous to those in *Kelley*.[5] The evidence clearly suggests, as we show below, that the trips from Georgia to the gambling establishment in Florida were not made by chance, but for the specific purpose of participating in the lottery, and that the operators of the lottery were well aware of this and encouraged it. In these circumstances, as in *Kelley*, it can be said with assurance that petitioners caused interstate travel.

2. In the somewhat analogous context of the mail fraud statute, 18 U.S.C. 1341, this Court has defined the verb "cause" broadly as meaning "bring about," *United States* v. *Kenofskey*, 243 U.S. 440, 443, and has further considered it in terms of reasonable foreseeability, *Pereira* v. *United States*, 347 U.S. 1,

[5] In *United States* v. *Chambers*, *supra*, customers of the house of prostitution were given fictitious calling cards after their first trip so that they subsequently could visit the establishment without arranging to be transported there by one of the taxicab drivers, 382 F. 2d at 914, n. 1.

8–9; see also *United States* v. *Scandifia,* 390 F. 2d 244 (C.A. 2), vacated on other grounds, 394 U.S. 310. While these concepts require refinement in the present context of consensual activity by the persons providing the interstate link, they provide a sound basis for a test of causation to be applied here.

A literal test of reasonable foreseeability might well result, as petitioners argue (Pet. Br. 10–12) in extension of the statute beyond its intended scope. A man, for example, who establishes a restaurant, at which he also provides gambling, on the main road between New York and Florida should reasonably expect that interstate travelers will stop there and gamble. But application of the Travel Act to him on the basis of his customers' travel would not seem appropriate, for it can hardly be said that he causes them to make their interstate journeys. But it is another matter when it is reasonably foreseeable that customers will undertake interstate travel for the specific purpose of patronizing the illegal enterprise. That, without more, should be enough to permit a finding that the operator has "caused" the interstate travel.

A literal "bringing about" test is considerably more stringent than a simple foreseeability test. Where genuinely consensual activity is involved, the operator of an illegal enterprise cannot, alone, bring about interstate travel or use of an interstate facility by his customers, as he more directly does when the interstate element is provided by an unwilling victim, an unwitting agent, or an employee. In a case such as this, the most an operator can do is attempt to attract

business from out-of-state by making the availability of the illegal activity known. It is his customers who decide "when, whether, where, how, how often, and how much they * * * bet" (Pet. Br. 9). But, on the other hand, they would be less likely to travel without the operator's active encouragement. The "bringing about" of interstate travel is thus truly joint. In this context it is appropriate to say that an operator "brings about" interstate travel when he successfully attracts customers who come from out-of-state for the specific purpose of patronizing his illegal enterprise.

The standard of causation appropriate when activity is consensual is thus whether the operator actively attracts individuals across state lines to participate in the illegal activity or can reasonably foresee that they will engage in interstate travel for that specific purpose. As we shall show, this test is fully consistent with the Congressional purpose in passing the Travel Act, and it was properly applied to petitioners in the courts below.

3. Petitioners do not and could not seriously contend that Congress is without power under the commerce clause to punish persons involved in an illegal activity who attract customers across state lines. Their sole contention is that Congress did not intend to accomplish such a result by passage of the Travel Act. However, the legislative history of the statute plainly supports the sensible interpretation that the Act, through the operation of 18 U.S.C. 2, applies to the operator of an illegal enterprise who causes another to engage in interstate travel or use an interstate

facility whether he is an employee, agent, victim or customer.

The Act is a comprehensive measure "primarily designed to stem the 'clandestine flow of profits' and to be of 'material assistance to the States in combating pernicious undertakings which cross State lines'." *United States* v. *Nardello,* 393 U.S. 286, 292. The House report makes clear a purpose to "assist local law enforcement by denying interstate facilities to individuals engaged in illegal gambling, liquor, narcotics or prostitution business enterprises." H. Rep. No. 966, 87th Cong., 1st Sess., p. 3. It is true, as petitioners point out (Pet. Br. 12–16), that the primary concern of the draftsmen was with organized crime and "the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, as well as against other hoodlums." S. Rep. No. 644, 87th Cong., 1st Sess., p. 3. But Congress manifestly did not intend to limit the application of the statute to "organized crime", a term petitioners themselves assert is "elusive" and difficult to define (Pet. Br. 16). Cf. *United States* v. *Fabrizio,* 385 U.S. 263. It is interstate travel or use of interstate facilities alone which triggers the Act, and there is nothing in it that requires proof of any particular volume of illegal business or connection with other illegal activities.

There is similarly no support for the proposition that Congress intended to differentiate the Travel Act from other criminal statutes by making 18 U.S.C. 2 inapplicable to it. To the contrary, both the Senate and House Reports quoted the following passage from

a letter of the Attorney General: "The bill would also have the effect, through its interaction with section 2 of Title 18, United States Code, of prescribing penalties for persons who send others on similar missions [across State lines]." S. Rep. No. 644, 87th Cong., 1st Sess., p. 4; H. Rep. No. 966, 87th Cong., 1st Sess., p. 4.

Finally, the history of the bill—and specifically the exchange of letters between the Attorney General and certain Congressmen regarding its scope, upon which petitioners rely—tends to support the interpretation that attraction of customers across state lines for the purpose of illegal activity is sufficient, under the principles of 18 U.S.C. 2, to supply the interstate element of a Travel Act offense. Among the concerns of the Congressmen was whether the Act would apply to a business enterprise which provides legitimate activity, such as dining or entertainment, in addition to illegal gambling, and which advertises only its legitimate activities across state lines. The Attorney General replied:

> * * * [I]t is my opinion that making arrangements for entertainment in business establishments such as supper clubs, hotels, or motels which businesses are legitimate in the community or the advertising of those legitimate businesses * * * through the medium of interstate commerce would not come within the intended prohibitions of the section.[6]

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[6] The Attorney General's letter, 107 Cong. Rec. 16542, in full, is set forth in the Appendix to this brief.

By implication, advertising or promoting illegal activities across state lines or arranging for customers to travel across state lines to patronize illegal establishments would be covered by the Act. Since such advertising or arrangements regarding illegal activities would inevitably be clandestine, however, it is difficult to prove them directly, and often necessary to infer that they have taken place from circumstances such as those in this case.

II. THE EVIDENCE WAS SUFFICIENT TO SHOW THAT PETITIONERS CAUSED INTERSTATE TRAVEL BY CUSTOMERS OF THEIR ILLEGAL LOTTERY.

The evidence in this case amply supports the inference that petitioners sought to attract Georgia customers to come to their Florida lottery. The gambling enterprise was conducted from a private house in a small hamlet near the Georgia-Florida border. It is most unlikely that one would chance upon this remote location. Rather, it seems certain that customers—if indeed they were not runners—came across the state line as a result of solicitation, direct or indirect, by petitioners.

Other evidence confirms the conclusion that the game was pre-arranged among the operators and players. A small number of persons, usually the same eight or nine, came to the house at approximately the same time on Saturday mornings. A number of these regulars came from Georgia. One testified that she bought a lottery ticket at the house because she did not know of lotteries in Georgia. The visitors arrived at an appropriate time to purchase numbers

from the lottery operator prior to the drawing. Most remained a short time on the premises and then returned to Georgia.

These facts, in our view, justify the inference that petitioners actively sought customers from Georgia, and elsewhere, probably in the word-of-mouth manner in which virtually any such enterprise becomes known to interested persons. But the evidence at a minimum sufficiently supports the inference that petitioners knew their establishment was attracting a regular out-of-state clientele who travelled interstate for the specific purpose of participating in the lottery. Either interpretation of the facts satisfies the standard of causation developed in the preceding section.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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JANUARY 1971.

APPENDIX

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., August 21, 1961.

Hon. OREN HARRIS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: This is in response to your letter of August 18, 1961, requesting my views as to the scope of S. 1653 a bill "to prohibit travel or transportation in commerce in aid of racketeering enterprises."

Before answering your specific questions it may be helpful to discuss the use of the words "any business enterprise" in subsection (b) of S. 1653 insofar as the intention of the drafter was concerned. During the formulation of the proposal we were aware that to prohibit travel in furtherance of any unlawful activity would be a very broad and vague proscription which might not reach the type of activity in which we were interested. The term "unlawful activity" was therefore defined to limit its application to those crimes which historically have been the forte of organized crime. Those crimes include gambling, liquor, narcotics, and prostitution offenses and extortion or bribery. However, since casual gambling, such as poker game in a private home, might violate the gambling statutes of some States a further restriction upon the operation of the statute was considered to be necessary.

The type of offenses which pose such a great threat to this country due to the involvement of organized crime are those offenses which are committed regularly and as a continuous course of conduct. The term "business enterprise involving" those offenses was used in the definition of "unlawful activity" to connote a continuous course of conduct in gambling, etc. It was not the intent to include within the reach of the statute legitimate business enterprises which may touch upon offenses such as gambling.

Thus, a legitimate pharmaceutical manufacturer would not be included within the reach of the statute if one of his employees is involved in a narcotic offense. The employee may himself violate the statute by engaging in a continued course of conduct in violation of the narcotics statutes but the legitimate business would not be affected by this bill.

An example of the type of activity which we consider to be within the purview of the statute would be travel to promote a continuous course of conduct involving gambling. Thus a gambling house would be within the definition of unlawful activity in the bill and any travel on the part of any person with the intent to establish a gambling house and a further act subsequent to the travel to promote that activity would be a violation of the section. Travel, to promote a legitimate business which may thrive because a gambling house is in the area, would not, in my opinion, violate the section. In summary it was intended to prohibit the travel to promote the gambling house, directly, and not to prohibit the travel to promote a hotel or supper club or any other legitimate business.

In view of the foregoing, it is my opinion that making arrangements for entertainment in business establishments such as supper clubs, hotels, or motels which businesses are legitimate in the community or the advertising of those legitimate businesses or the purchasing of food or beverages or the collection of checks by legitimate banking houses through the medium of interstate commerce would not come within the intended prohibitions of the section.

I thank you for your interest and cooperation in this matter and hope that the foregoing satisfactorily answers your inquiry.

Sincerely,

ROBERT F. KENNEDY,
Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORED REWIS and
MARY LEE WILLIAMS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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ARGUMENT

The government, in its brief, (U.S. Br. 13) compares the decisions under the mail fraud statute, 18 U.S.C. 1341, and Mann Act, 18 U.S.C. 2422, to the facts in this case under the Travel Act and offers them for analogous interpretation.

The government reasons that because the victim of a mail fraud scheme can supply the necessary "mailing" to bring the schemer within the federal statute, that a bettor or player in a gambling operation can supply the interstate

"travel" element to sustain a conviction under the Travel Act. The analogies are not valid because the wording of the statutes are substantially different. In the mail fraud statute Congress proscribed *all mailing* "for the purpose of executing such scheme or artifice". Thus, the victim may in fact supply the missing "mailing" element to confer federal jurisdiction if the mailings were "a part of the execution of the fraud", *Kann v. United States,* 323, U.S. 88,95, 89 L.ed. 88, 96, 65 S.Ct. 148, 157 A.L.R. 406; or, were incident to an essential part of the scheme", *Pereira v. United States,* 347 U.S. 1, 8, 98 L.ed 435, 444, 74 S.Ct. 358. The Travel Act does not proscribe *all travel* in interstate commerce which results in any gambling participation, it proscribes only that travel with intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of" the unlawful activity. The Opinion of the Fifth Circuit in this case acknowledged that the players or bettors were not covered by the statute and the government has not taken a different position here. For the government's analogy to be valid the Travel Act would have had to proscribe all interstate travel for the purpose of gambling just as the mail fraud statute proscribes all mailings for the purpose of executing the fraudulent scheme.

The attempt to analogize the Mann Act to the Travel Act must also fail. That Act, 18 U.S.C. 2422, attaches criminality to "Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce * * *" for prostitution. Here the language of the statute clearly and concisely proscribes a type of conduct which the government contends the Congress intended to proscribe in the Travel Act. Actually a comparison of the two statutes gives force to the petitioners' argument that Congress did not intend the Travel Act to apply under the circumstances of this case. "When Congress has the will, it has no difficulty in expressing it * * *. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambi-

guity should be resolved in favor of lenity * * *". *Bell v. United States*, 358 U.S. 169, 3 L.ed 2d 199, 79 S.Ct. 209 (1958).

The government urges the adoption of a "bringing about" test (U.S. Br. 15) to apply to the "attraction" theory contained in the Fifth Circuit Opinion in this case. The government asserts, "But it is another matter when it is reasonably foreseeable that customers will undertake interstate travel for the specific purpose of patronizing the illegal enterprise." (U.S. Br. 15). Even if this theory could be read into the Congressional Act, the pragmatic difficulties in applying it (by juries as well as courts) make it "reasonably foreseeable" that it would not work. When an interstate traveler goes to Miami, San Francisco, Chicago, New York, or any other place, how can a judge or jury say that his purpose was to participate in an unlawful activity and not to take a vacation or attend a convention?

The letter in the Congressional Record from Senator McClelland and Representative Harris (Pet. Br. 14) and the Attorney General's reply (Pet. Br. 15) make it clear that an interstate traveler who responds to advertising to supper clubs and business activities which provide shows, dining, dancing, and other entertainment as well as illegal gambling activities, is not intended to bestow federal criminal jurisdiction upon the operator of the business establishment. What jury or judge could discern whether or not the traveler's specific purpose was to gamble, or to enjoy the legal activities set up to induce the travelers to come and gamble?

When all is said, however, we must still look to the facts of this case. Here the only "attraction" which petitioners offered to interstate travelers was the proximity of their illegal enterprise to the State border—fifteen miles on a side road on the highway between Jacksonville and Fernandina. To apply the government's theory to the facts of this case

would broaden federal criminal jurisdiction beyond the intent of the Congress.

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REWIS ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5342. Argued January 19, 1971—Decided April 5, 1971

Petitioners conducted a lottery operation in Florida, near the Georgia border. They were convicted along with two Georgia residents who placed bets at petitioners' establishment, of violating 18 U. S. C. § 1952, the Travel Act, which prohibits interstate travel with the intent to "promote, manage, establish, carry on or facilitate" certain illegal activity. The District Court instructed the jury that if the Georgia bettors traveled to Florida for the purpose of gambling, they violated the Act, and that a defendant could be found guilty under the aiding and abetting statute, 18 U. S. C. § 2, without proof that he had personally performed every act constituting the charged offense. The Court of Appeals reversed the convictions of the Georgia bettors, holding that § 1952 did not make it a federal crime merely to cross a state line to place a bet, but upheld petitioners' convictions on the ground that gambling establishment operators are responsible for the interstate travel of their customers. *Held:* Conducting a gambling operation frequented by out-of-state bettors does not, without more, constitute a violation of the Travel Act. Pp. 3–6.

418 F. 2d 1218, reversed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACK, DOUGLAS, HARLAN, BRENNAN, STEWART, and BLACKMUN, JJ., joined. WHITE, J., took no part in the decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 5342.—October Term, 1970

James Wintfored Rewis and Mary Lee Williams, Petitioners, *v.* United States.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April 5, 1971]

Mr. Justice Marshall delivered the opinion of the Court.

In this case, petitioners challenge their convictions under the Travel Act, 18 U. S. C. § 1952, which prohibits interstate travel in furtherance of certain criminal activity.[1] Although the United States Court of Appeals for the Fifth Circuit narrowed an expansive interpretation of the Act, the Court of Appeals affirmed petitioners' convictions. For the reasons stated below, we reverse.

[1] 18 U. S. C. § 1952 provides in pertinent part:

"(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

"(1) distribute the proceeds of any unlawful activity; or

"(2) commit any crime of violence to further any unlawful activity; or

"(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

"(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States."

Petitioners, James Rewis and Mary Lee Williams, were convicted along with two other defendants in the United States District Court for the Middle District of Florida.[2] Their convictions arose from a lottery, or numbers operation, which petitioners admittedly ran in Yulee, Florida, a small community located a few miles south of the Georgia-Florida state line. Petitioners are Florida residents, and there is no evidence that they at any time crossed state lines in connection with the operation of their lottery. The other two convicted defendants are Georgia residents who traveled from their Georgia homes to place bets at petitioners' establishment in Yulee.

The District Court instructed the jury that mere betters in a lottery violated Florida law, and that if the betters traveled interstate for the purpose of gambling, they also violated the Travel Act. Presumably referring to petitioners, the District Court further charged that a defendant could be found guilty under the aiding and abetting statute, 18 U. S. C. § 2,[3] without proof that he personally performed every act constituting the charged

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[2] Petitioners were convicted of eight substantive violations under § 1952 and of conspiracy to violate the section. Petitioner Rewis was sentenced to five years' imprisonment on each count, to run concurrently. Petitioner Williams was sentenced to three years' imprisonment on each count, to run concurrently, subject to parole under 18 U. S. C. § 4208 (a)(2). Petitioner Rewis was also convicted of two counts of having failed to purchase a wagering tax stamp. These latter two convictions were reversed by the Court of Appeals under the intervening decisions of this Court in *Marchetti* v. *United States*, 390 U. S. 39 (1968), and *Grosso* v. *United States*, 390 U. S. 62 (1968).

[3] 18 U. S. C. § 2 provides:

"(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

offense. On appeal, the Fifth Circuit held that § 1952 did not make it a federal crime merely to cross a state line for the purpose of placing a bet and reversed the convictions of the two Georgia residents because the evidence presented at trial was insufficient to show that they were anything other than customers of the gambling operation.[4] However, the Court of Appeals upheld petitioners' convictions on the grounds that operators of gambling establishments are responsible for the interstate travel of their customers. 418 F. 2d 1222.

We agree with the Court of Appeals that it cannot be said, with certainty sufficient to justify a criminal conviction, that Congress intended that interstate travel by mere customers of a gambling establishment should violate the Travel Act.[5] But we are also unable to conclude that conducting a gambling operation frequented by out-of-state bettors, by itself, violates the Act. Section 1952 prohibits interstate travel with the intent to "promote, manage, establish, carry on or facilitate" certain kinds of illegal activity; and the ordinary meaning of this language suggests that the traveler's purpose must involve more than the desire to patronize the illegal activity. Legislative history of the Act is limited, but does reveal that § 1952 was aimed primarily at organized crime and, more specifically, at persons who reside in one State while operating or managing illegal activities located in another.[6] In addition, we are struck by what Congress

[4] 418 F. 2d 1218. The Government has not sought review of that part of the Court of Appeals decision reversing the conviction of the two Georgia residents.

[5] Both parties correctly concede that the questions in this case are solely statutory. No issue of constitutional dimension is presented.

[6] Incorporated in the Senate report (Report No. 644, 87th Cong., 1st Sess., dated July 27, 1961) the following appears:

"The bill, S. 1653, was introduced by the Chairman of the Committee, Senator James O. Eastland, on April 18, 1961, on the recom-

did not say. Given the ease with which citizens of our Nation are able to travel and the existence of many multistate metropolitan areas, substantial amounts of criminal activity, traditionally subject to state regulation, are patronized by out-of-state customers. In such a context, Congress would certainly recognize that an expansive Travel Act would alter sensitive federal-state relationships, could overextend limited federal police resources, and might well produce situations in which the geographic origin of customers, a matter of happenstance, would transform relatively minor state offenses into federal felonies. It is not for us to weigh the merits of these factors, but the fact that they are not even discussed in the legislative history of § 1952 strongly suggests that Congress did not intend that the Travel Act should apply to criminal activity solely because that activity is at times

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mendation of the Attorney General, Robert F. Kennedy, as a part of the Attorney General's legislative program to combat organized crime and racketeering.

"The Attorney General testified before the committee in support of the bill, S. 1653, on June 6, 1961, and commented:

" '. . . we are seeking to take effective action against the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety, as well as against other hoodlums.

" 'Let me say from the outset that we do not seek or intend to impede the travel of anyone except persons engaged in illegal businesses as spelled out in the bill. . . .

" 'The target clearly is organized crime. The travel that would be banned is travel "in furtherance of a business enterprise" which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery. Obviously, we are not trying to curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise.'

. . . . . .

" 'Our investigations also have made it quite clear that only the Federal Government can shut off the funds which permit the top men of organized crime to live far from the scene and, therefore, remain immune from the local officials.' "

patronized by persons from another State. In short, neither statutory language nor legislative history supports such a broad ranging interpretation of § 1952. And even if this lack of support were less apparent, ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity, *Bell* v. *United States*, 349 U. S. 81, 83 (1955).

The Government concedes as much, but offers an alternative construction of the Travel Act—that the Act is violated whenever the operator of an illegal establishment can reasonably foresee that customers will cross state lines for the purpose of patronizing the illegal operation or whenever the operator actively seeks to attract business from another State. The first half of this proposed interpretation—reasonable foreseeability of interstate patronage—does not merit acceptance. Whenever individuals actually cross state lines for the purpose of patronizing a criminal establishment, it will almost always be reasonable to say that the operators of the establishment could have foreseen that some of their customers would come from out-of-state. So, for practical purposes, this alternative construction is almost as expansive as interpretations that we have already rejected. In addition, there is little, if any, evidence that Congress intended that foreseeability should govern criminal liability under § 1952.

There may, however, be greater support for the second half of the Government's proposed interpretation—that active encouragement of interstate patronage violates the Act. Of course, the conduct deemed to constitute active encouragement must be more than merely conducting the illegal operation; otherwise, this interpretation would only restate other constructions which we have rejected. Still, there are cases in which federal courts have correctly applied § 1952 to those individuals whose agents or employees cross state lines in furtherance of illegal

activity, see, *e. g., United States* v. *Chambers,* 382 F. 2d 910, 913–914 (CA6 1967); *United States* v. *Barrow,* 363 F. 2d 62, 64–65 (CA3 1966), cert. denied, 385 U. S. 1001 (1967); *United States* v. *Zizzo,* 338 F. 2d 577, 580 (CA7 1964), cert. denied, 381 U. S. 915 (1965), and the Government argues that the principles of those decisions should be extended to cover persons who actively seek interstate patronage. Although we are cited to no cases which have gone so far and although much of what we have said casts substantial doubt on the Government's broad argument, there may be occasional situations in which the conduct encouraging interstate patronage so closely approximates the conduct of a principal in a criminal agency relationship that the Travel Act is violated. But we need not rule on this part of the Government's theory because it is not the interpretation of § 1952 under which petitioners were convicted. The jury was not charged that they must find that petitioners actively sought interstate patronage. And we are not informed of any action by petitioners, other than actually conducting their lottery, that was designed to attract out-of-state customers. As a result, the Government's proposed interpretation of the Travel Act cannot be employed to uphold these convictions.

Reversed.

MR. JUSTICE WHITE took no part in the decision in this case.